IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

WP(C).No. 24745 of 2005(U)

OS.131/2001 of MUNSIFF COURT, KOTTARAKKARA

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PETITIONER:

C. VIJAYAMOHANAN NAIR,
RESIDING AT VEESUPALATHUNDIL, PADINJATTINKARA MURI
KOTTARAKKARA VILLAGE, KOTTARAKKARA TALUK.

BY ADV. SRI.K.K.JOHN
SRI.BROSE JOSEPH NEELIYARA

RESPONDENTS:

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1. KOTTARAKKARA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY.

2. P. HARIDAS,
RESIDING AT MARANGATTU VEEDU,PADINJATTINKARA MURI,
KOTTARAKKARA VILLAGE.

3. REGHUNATHAN NAIR,
RESIDING AT NEELAKANDA NIVAS, THAZHATHUKULAKADA-
MURI, KULAKKARA VILLAGE, KOTTARAKKARA TALUK.

4. SASIDHARAN PILLAI,
RESIDING AT SASIMANDIRAM, PADINJATTINKARA MURI,
KOTTARAKKARA VILLAGE.

BY ADV. SRI.C.J.JOY
SRI.D.JAYACHANDRAN
SMT.P.A.ANITHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE ORDER IN I.A.3209/2004 IN O.S.131/2001 DTD.21.5.2005 BEFORE THE MUNSIFF'S COURT, KOTTARAKKARA.

EXT.P2 TRUE COPY OF THE ORDER INI.A.1384/2005 IN O.S.131/2001 DTD.9.6.2005 BEFORE THE MUNSIFF'S COURT,KOTTARAKKARA.

TRUE COPY

P.A.TO JUDGE

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M.N.KRISHNAN, J.

WP(C)No. 24745 OF 2005 U

Dated this the 21st June, 2007.

JUDGMENT

This writ petition is filed seeking to quash Exts.P1 and P2 orders passed by the Munsiff, Kottarakkara. Ext.P1 is an order passed in the amendment application I.A.3209/04 wherein the plaintiff wanted to amend the plaint by incorporating a prayer that the building permit granted in favour of defendants 2 and 3 is null and void. The suit filed on 3.3.2001 is for a declaration that it is a public path way. In order to succeed the plaintiff has to establish that it is a public path way and nothing else. So, the incorporation of another prayer to set aside the building permit as null and void need not have been tacked on with the prayer in the present plaint. There may be provisions under the Panchayat Act to challenge a permit given to a person when somebody else is aggrieved by the non-statutory performance of the Panchayat. Further, by amending the plaint in the way in which it is sought, it will change the character of the suit itself and therefore the court below was right in refusing to entertain the amendment application. As far as Ext.P2 is concerned, it is only another amendment application incorporating the same relief and therefore the filing of second application

is barred by the principle of res judicata because even in pending proceedings the orders can operate as res judicata. Therefore, the dismissal of Ext.P2 also is in order. Therefore the writ petition lacks merits. Dismissed. If the plaintiff is aggrieved by the decision of the Panchayat in granting a permit it is for him to pursue his remedy as per the statute or by a separate proceedings, if permissible by law.

M.N.KRISHNAN
Judge

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